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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,298	07/09/2003	Alfons Sieverding	302220	1297
7590	04/12/2005		EXAMINER	
Richard M. Mescher, Esq. Porter, Wright, Morris & Arthur LLP 41 South High Street Columbus,, OH 43215-6194			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/604,298	SIEVERDING, ALFONS
	Examiner	Art Unit
	Andrea M. Valenti	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 February 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 and 10-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-6 and 10-14 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,091,360 to Edwards in view of U.S. Patent No. 3,353,707 to Eyles and United Kingdom Patent GB 859,964 to Pharce-Smith.

Regarding Claims 1 and 11-14, Edwards teaches a stackable deep-drawn plastic container in the form of a plant pot container comprising: an at least slightly conical wall (Edwards #12 and Col. 2 line 40-41) and a bottom (Edwards Fig. 7 #120) connected to the conical wall, wherein the conical wall has a rim area (Edwards #118) remote from the bottom;

Edwards teaches a first ledge (Edwards Fig. 12 #232) and a second ledge (Edwards Fig. 12 #234), located below the first ledge, comprises an intermediate support area (Edwards Fig. 10 #136) having a first end connected to the first ledge and having a second end connected to the second ledge, wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges (Edwards Fig. 12), wherein the first and second ledges in a plan view, at least partially overlap, wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge (Edwards Fig. 12 #232

smaller than #234) and the intermediate support area having a wave shape (Edwards Fig. 7 and 9 #130, 136, 124) at least at one of the first and second ends which softens a cross-sectional stiffness of the rim area for improved removal from the mold (Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. In re Mraz, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put together. Jockmus v. Leviton, 28 F.2d 812 (2d Cir. 1928). The origin of the drawing is immaterial. For instance, drawings in a design patent can anticipate or make obvious the claimed invention as can drawings in utility patents. When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. In re Aslanian, 590 F.2d 911, 200 USPQ 500 (CCPA 1979). See MPEP § 2121.04 for more information on prior art drawings as enabled disclosures); wherein the second ledge has a contour matching the wave shape of the intermediate support area (Edwards Fig. 7, 9 and 12 #130) and overlaps in a plan view radially at least most of the radial width of the first ledge (Edwards Fig. 12); wherein the wave shape is sized and shaped to permit deformation (Edwards Col. 4 line 66) of at least the second ledge during removal from a deep drawing mold; wave shape softens the cross-sectional stiffness but does not soften a longitudinal stiffness.

Edwards is silent on the rim area containing the first and second ledges and the intermediate support area and that the first ledge forms an upper flange rim of the rim

area for nesting/stacking; and wherein the upper flange rim has a wall thickness that is greater than a wall thickness of the remaining parts of the plastic container.

However, Eyles teaches that first ledge, second ledge, and intermediate area for stacking containers is located at the rim area (Eyles Fig. 6 #32, 31, 17). It would have been obvious to one of ordinary skill in the art to modify the teachings of Edwards with the teachings of Eyles at the time of the invention since the modification is merely the shifting location of known elements performing the same intended function to prevent vertical displacement as taught by Eyles (Eyles Col. 2 line 26-28).

Edwards as modified by Eyles is silent on the upper flange has a greater wall thickness. However, Pharc-Smith teaches a plant pot rim with a greater thickness than the container thickness (Pharc-Smith Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Edwards with the teachings of Pharc-Smith at the time of the invention since the modification is merely an engineering design choice selected to enhance the strength of the rim to prevent undesirable bending when transporting a full/heavy container and to provide a larger surface area for gripping the container at the rim.

Regarding Claim 2, Edwards as modified teaches the wave shape of the intermediate support area is a rectangular wave shape (Edwards Fig. 7 and 9).

Regarding Claim 3, Edwards as modified teaches the wave shape forms divisions in the circumferential direction, which are not significantly greater than dimensions of the intermediate support area (Edwards Fig. 7, 9, 6, and 8 #136, 138).

Regarding Claim 4, Edwards as modified teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Edwards Fig. 7 and Fig. 12 area between #232 and 234).

Regarding Claim 5, Edwards as modified teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Edwards Fig. 6 and 7).

Regarding Claim 6, Edwards as modified teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Edwards Fig. 12, and 10).

Regarding Claim 10, Edwards as modified teaches the upper flange rim has an outer downwardly bent edge (Edwards #118).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent JP 05213358 to Yosomiya.

Regarding Claims 1 and 11-14, Yosomiya teaches a stackable deep-drawn plastic container in the form of a plant pot container comprising: an at least slightly conical wall (Yosomiya Fig. 2 #2) and a bottom (Yosomiya Fig. 4 #12) connected to the conical wall, wherein the conical wall has a rim area remote from the bottom, wherein the rim area is comprised of a first ledge (Yosomiya Fig. 2 #13) and a second ledge (Yosomiya Fig. 2 #15), located below the first ledge, wherein the rim area comprises an intermediate support area (Yosomiya Fig. 2 #14) having a first end connected to the first ledge and having a second end connected to the second ledge, wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges, wherein the first and second ledges in a plan view onto the rim area, at least partially overlap, wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge (Yosomiya Fig. 1, 2, 5 #10) and the intermediate support area having a wave shape at least at one of the first and second ends which softens a cross-sectional stiffness of the rim area for improved removal from the mold (Yosomiya Fig. 1, 2, 5, #10); wherein the wave shape is sized and shaped to permit deformation of at least the second ledge during removal from a deep drawing mold; wave shape softens the cross-sectional stiffness but does not soften a longitudinal stiffness; wherein the second ledge has a contour matching the wave shape of the intermediate support area (Yosomiya Fig. 5 #10 indicates that element #15 follows the wave of element #10) and overlaps in a plan view radially at least most (“most” is a subjective term and the fact that Yosomiya teaches that #15 overlaps a portion of #13 is in fact overlapping a “good amount” i.e.

"most" of #13) of the radial width of the first ledge; wherein the first ledge forms an upper flange rim of the rim area; and wherein the upper flange rim has a wall thickness that is greater than a wall thickness of the remaining parts of the plastic container (Yosomiya Fig. 2 #13 appears to be thicker than element #2 and English abstract teaches "plastic").

Regarding Claim 2, Yosomiya teaches the wave shape of the intermediate support area is a rectangular wave shape (Yosomiya Fig. 1 and 5 #10).

Regarding Claim 3, Yosomiya teaches the wave shape forms divisions in the circumferential direction which are not significantly greater than dimensions of the intermediate support area (Yosomiya Fig. 1 and 5 #10).

Regarding Claim 4, Yosomiya teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Yosomiya Fig. 1 #10 and Fig. 2 #14).

Regarding Claim 5, Yosomiya teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Yosomiya Fig. 2 #14).

Regarding Claim 6, Yosomiya teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Yosomiya Fig. 2).

Regarding Claim 10, Yosomiya teaches the upper flange rim has an outer downwardly bent edge (Yosomiya Fig. 2 #13).

Response to Arguments

Applicant's arguments with respect to claims 1-6 and 10-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,863,058; U.S. Patent No. 3,721,367; U.S. Patent No. 2,335,260; Japanese Patent JP05170243.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

05 April 2005